

# CDBG-DR Consolidated Notice & Allocation Announcement Notice (AAN)

2020 CDBG-DR Notice Walkthrough



2022 CDBG-DR Consolidated Notice Training Series



# Presenters

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# Agenda

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1. What is the Consolidated Notice & AAN
2. Review Sections I through V in the Consolidated Notice
3. Review the Sections of the AAN
4. Take Questions







# What is the Consolidated Notice & AAN

Presenter: Jen Carpenter



# What is the AAN and what is the Consolidated Notice?

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- The AAN publishes the CDBG-DR allocations for disasters occurring in 2020 and includes waivers and alternative requirements specific to the Appropriations Act (Pub. L. 117-43 for 2020 CDBG-DR grants) that allocated the funding.
- The Consolidated Notice combines and updates requirements from several different *Federal Register* notices and CPD Notices that have governed CDBG-DR funds in the past.



# How to read the AAN and the Consolidated Notice

- The Consolidated Notice is located in Appendix B. (you can start here)
- The Allocation Announcement Notice (AAN) makes up section I. through VII. in the Federal Register.
- As always, you will see the Allocation Methodology included in the notice as Appendix A.

## 1 SUPPLEMENTARY INFORMATION:

### 2 Table of Contents

3 I. Allocations

4 II. Use of Funds

5 III. Overview of Grant Process

6 A. Requirements Related to Administrative Funds

7 IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

8 A. Grant Administration

9 V. Duration of Funding

10 VI. Catalog of Federal Domestic Assistance

11 VII. Finding of No Significant Impact

12 Appendix A: Allocation Methodology

13 Appendix B: CDBG-DR Consolidated Notice

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# Keys Steps in the New Process





# Deadlines to Remember

Action	Date
Federal Register Published	February 3, 2022
Federal Register Applicable	February 8, 2022 (5 days later)
Financial and Grant Management Certification Checklist	April 9, 2022 (60 days)
Implementation Plan and Public Action Plan* in DRGR	June 8, 2022 (120 days)

\*Grantees may request an extension of the Action Plan due date with good cause.



# Sections of the Consolidated Notice

**01**

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Waivers and Alternative requirements

**02**

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Eligible activities

**03**

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Grant administration

**04**

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Other program requirements

**05**

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Performance reviews

**Note:**

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The Allocation Announcement Notice will apply the appendix in its entirety, including any necessary modifications.



# Subsections of the Consolidated Notice

- I. Waivers and Alternative Requirements
- II. Eligible Activities
  - A. Clarification of Disaster-related Activities
  - B. Housing and Related Floodplain Issues
  - C. Infrastructure (Public Facilities, Public Improvements)
  - D. Economic Revitalization
- III. Grant Administration
  - A. Pre-award Evaluation of Management and Oversight of Funds
  - B. Administration, Planning, and Financial Management
  - C. Action Plan for Disaster Recovery Waiver and Alternative Requirement
  - D. Citizen Participation Requirements
  - E. Program Income
  - F. Other General Waivers and Alternative Requirements
  - G. Ineligible Activities in CDBG-DR
- IV. Other Program Requirements
  - A. Duplication of Benefits
  - B. Procurement
  - C. Use of the “Upper Quartile” or “Exception Criteria”
  - D. Environmental Requirements
  - E. Flood Insurance Requirements
  - F. URA, Section 104(d) and related CDBG Program Requirements
- V. Performance Reviews
  - A. Timely distribution and expenditure of funds
  - B. HUD’s Review of Continuing Capacity
  - C. Grantee Reporting Requirements in the DRGR system





# Section I: Waivers & Alternative Requirements

Presenter: Clay LLOYD



# I. Waivers and Alternative Requirements

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- "CDBG–DR grantees that are subject to this Consolidated Notice, as indicated in each Federal Register notice that announces allocations of the appropriated CDBG–DR funds (“Allocation Announcement Notice”), ***must comply with all waivers and alternative requirements in the Consolidated Notice***, unless expressly made inapplicable..."
  - Unless waived, State grantees follow State CDBG
  - Unless waived, local government grantees follow Entitlement CDBG
  - Unless waived, Indian territory grantees follow Indian CDBG





# Section II: Eligible Activities

Presenter: Clay LLOYD





## II.A. Clarification of Disaster-related Activities, cont.

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### *II.A. Clarification of Disaster-related Activities (87 FR 6370)*

- Each activity must:
  - (1) Address a direct or indirect impact from the disaster in a most impacted and distressed area;
  - (2) be a CDBG eligible activity (or be eligible under a waiver or alternative requirement); and
  - (3) meet a national objective
- When appropriations acts provide an additional allocation amount for mitigation of hazard risks that does not require a connection to the qualifying major disaster, requirements for the use of those funds will be included in the Allocation Announcement Notice.

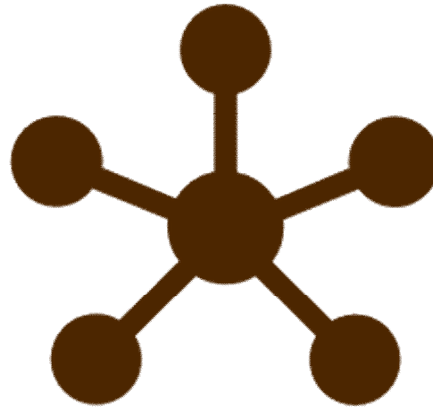


## II.A. Clarification of Disaster-related Activities, cont.

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### *II.A.1. Documenting a Connection to the Disaster (87 FR 6371)*

- Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster.



## II.A. Clarification of Disaster-related Activities, cont.

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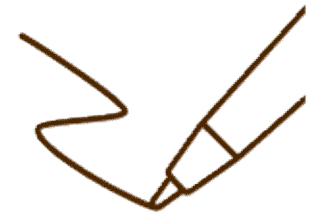
### *II.A.2. Resilience and hazard mitigation (87 FR 6370)*

- **II.A.2.a. Alignment with mitigation plans**

- *New:* Grantees' action plan must align with existing FEMA Hazard Mitigation Plans or other state, local, or tribal hazard mitigation plans.

- **II.A.2.b. Mitigation measures**

- *New:* Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG-DR funds.





## II.A. Clarification of Disaster-related Activities, cont.

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### *II.A.2. Resilience and hazard mitigation (87 FR 6370)*

- **II.A.2.c. Resilience performance metrics**
- *New:* For activities that construct, reconstruct, or rehabilitate residential or non-residential structures, the grantee must establish resilience performance metrics for the activity, including:
  - (1) An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (e.g., high winds destroying newly built homes),
  - (2) identification of the mitigation measures that will address the projected risks (e.g., using building materials that are able to withstand high winds), and
  - (3) an assessment of the benefit of the grantee's measures through verifiable data (e.g., 10 newly built homes will withstand high winds up to 100 mph).



## II.A. Clarification of Disaster-related Activities, cont.

### Resilience Performance Metrics

- **Example**
  - Program: Housing Rehabilitation
  - Disaster Type: Flood
- **New Resilience Metrics**
  - # of completed housing units in a Special Flood Hazard Area
  - # of housing units elevated to at least 2 feet above Base Flood Elevation
  - # of housing units protected from 100-year flood event

	A	
1		
2		
3	Construction of New Housing	
4	Projected Units	
5	# of Housing Units (Quarterly Projection)	
6	Actual Units	
7	# of Housing Units (Populated from QPR Reporting)	
8	# of completed Housing Units in a Special Flood Hazard Area	
9	# of Housing Units elevated to at least 2 feet above Base Flood Elevation	
10	# of Housing Units protected from 100-year flood event	
11		



## II.A. Clarification of Disaster-related Activities, cont.

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### *II.A.3. Most impacted and distressed (MID) areas (87 FR 6371)*

- Funds must be used for costs related to unmet needs in the MID areas resulting from qualifying disasters – See Table 2 for MID areas
- *New: Similar to CDBG-MIT, now allowing activities outside of the MID*
  - “Grantee expenditures for eligible unmet needs outside of the HUD-identified or grantee-identified MID areas are allowable, provided that the grantee can demonstrate how the expenditure of CDBG-DR funds outside of the MID areas will address unmet needs identified within the HUD-identified or grantee-identified MID area.”



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.1. New housing construction waiver and alternative requirement (87 FR 6371)*

- New construction is allowable in CDBG-DR. Same waiver and alternative requirement in prior notices.

### *II.B.2. Construction standards for new construction, reconstruction, and rehabilitation (87 FR 6371)*

- a. Green and Resilient Building Standard for new construction and reconstruction of housing
- b. Standards for rehabilitation of nonsubstantially damaged residential buildings
- c. Elevation standards for new construction, reconstruction, and rehabilitation of substantial damage, or rehabilitation resulting in substantial improvements
- d. Broadband infrastructure in housing





## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.2. Construction standards for new construction, reconstruction, and rehabilitation (87 FR 6371)*

- *Building Standard*

(i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC–700 National Green Building Standard Green+Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD

- *Energy Standard*

(i) ENERGY STAR (Certified Homes or Multifamily High-Rise);  
(ii) DOE Zero Energy Ready Home;  
(iii) EarthCraft House, EarthCraft Multifamily;  
(iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association;  
(v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label);  
(vi) Earth Advantage New Homes; or  
(vii) any other equivalent energy efficiency standard acceptable to HUD.

*\*\*Grantees must identify, in each project file, which of these Green and Resilient Building Standards will be used for any building subject to this paragraph*



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.2. Construction standards for new construction, reconstruction, and rehabilitation (87 FR 6371)*

- *Elevation standards*

- All structures, defined at 44 CFR 59.1, designed principally for residential use, and located in the 100-year floodplain, that receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least TWO FEET above base flood elevation.
- Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.
- All Critical Actions within the 500-year floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)– (3) or successor standard) to the higher of the 500-year floodplain elevation or THREE FEET above the 100-year floodplain elevation. Critical Actions are defined as “any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.” For example, Critical Actions include hospitals, nursing homes, emergency shelters, police stations, fire stations, and principal utility lines.



## II.B. Housing and Related Floodplain Issues, cont.

### *II.B.3. Applicable affordability periods for new construction of affordable rental housing (87 FR 6372)*

- **New:** Now we have an updated standard to be consistent with other HUD programs.
- New construction of affordable rental buildings (5+ units) – grantee defines “affordable rents” and then:
  - Use the HOME standard for affordability
  - Record the deed restriction
  - Income checked at occupancy or change of occupancy (no annual recert)
  - [https://www.ecfr.gov/current/title-24/subtitle-A/part-92#p-92.252\(e\)](https://www.ecfr.gov/current/title-24/subtitle-A/part-92#p-92.252(e))

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20



## II.B. Housing and Related Floodplain Issues, cont.

### *II.B.4. Affordability period for new construction of homes built for LMI households (87 FR 6372)*

- **New:** Now we have an updated standard to be consistent with other HUD programs.
  - Newly constructed single-family homes (4 units or less)
  - Selling to an LMI individual/household
    - Income checked at occupancy or transfer of title (no annual recert)
  - Following HOME affordability standards
    - [https://www.ecfr.gov/current/title-24/subtitle-A/part-92#p-92.254\(a\)\(4\)](https://www.ecfr.gov/current/title-24/subtitle-A/part-92#p-92.254(a)(4))

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.5. Homeownership assistance waiver and alternative requirement (87 FR 6373)*

- *New:* While the rule remains the same and unchanged as prior notices, this time the entire regulation is included in the notice for convenience and updated with CDBG-DR's alternative requirements on income and amount of down-payment assistance allowed.
- Provides increase of eligibility up to 120 percent of area median income for all eligible forms of homeownership assistance.
- Allows up to 100% of down-payment assistance.





## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.6. Limitation on emergency grant payments—interim mortgage assistance (87 FR 6373)*

- *New:* Allowed interim mortgage assistance (up to 20 months) in the past, but HUD is now more specific about when this should be used:
  - “IMA must be used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is not habitable.”
  - For example, when a disaster-impacted household has two payments for housing, because they are paying rent elsewhere while their home is not habitable during a complex rehab project, but still must cover their mortgage payment. Grantees can cover the mortgage for up to 20 months.



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.7. Buyout activities (87 FR 6373)*

- *An activity specific to CDBG-DR*
- **Buyout**
  - *acquisition of a property with the specific purpose of reducing risk from future hazards*
  - *located in floodplain or Disaster Risk Reduction Area*

#### **II.B.7.a. Buyout requirements**

- i. Floodway Location
  - Located in a floodplain or Disaster Risk Reduction Area
- ii. Perpetuity
  - Dedicated or maintained as open space (or other eligible use) in perpetuity



# II.B. Housing and Related Floodplain Issues, cont.

## *II.B.7. Buyout activities (87 FR 6373)*

- *New:* Grantees must develop an Open Space Management Plan
- *New:* When designating a Disaster Risk Reduction Area – grantees must consider the protection of members of protected classes, vulnerable populations, and underserved communities.
- *New:* No longer limited to Real Property – able to buyout mobile homes (even if considered real property in your state)
- *New:* For valuation method, grantees choose pre-disaster vs. post-disaster, but may provide exceptions to its established valuation method on a case-by- case basis.

### **II.B.7.a. Buyout requirements**

- i. Floodway Location
- ii. Perpetuity
- iii. Limits on new structure
- iv. Future disaster assistance on property
- v. Deed restriction
- vi. Pre/Post-Disaster Valuation
- vii. Activity type DRGR
- viii. Local/Tribal consultation in buyout area



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.8. Safe housing incentives in disaster-affected communities (87 FR 6374)*

- *New:* Waiver is like past notices, but HUD has rebranded to “Safe housing incentives” to define the intent of the incentives – which is assistance to incentivize households to move out of harm’s way and to a safer housing location.
- Must have a necessary and reasonable justification for the amount provided.



## II.B. Housing and Related Floodplain Issues, cont.

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*II.B.9. National objectives for buyouts and safe housing incentives (87 FR 6374): Similar to past notices*

### LMI Housing (LMH):

- To meet the criteria, the grantee must verify that the grantee-assisted household secures new permanent housing

### LMI Area Benefit (LMA):

- To meet the criteria, define the buyout area – if subsequent greenspace or other eligible use benefits an area that is primarily residential and 51% or more LMI

### LMI Limited Clientele (LMC):

- To meet the criteria, the buyout activities are only available to LMI households and valuation method must be more than FMV





## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.10. For LMI Safe Housing Incentive (LMHI) (87 FR 6374)*

- *New: LMHI criteria changes*
  - NOTE: HUD removed the LMB criteria from past notices to focus resources on moving households to a safer location
  - LMHI Criteria: In both instances, grantees must document that the beneficiary moved to a lower risk area or structure
    - To meet the LMHI national objective, the incentive must be:
      - (a.) tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household and made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or
      - (b.) for the purpose of providing or improving residential structures that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area.



## II.B. Housing and Related Floodplain Issues, cont.

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### *II.B.11. Redevelopment of acquired properties (87 FR 6374)*

- Same waiver as prior notices: Eligible use of funds for non-buyout acquisitions
- More information provided on optional relocation in this section.

### *II.B.12. Alternative requirement for housing rehabilitation—assistance for second homes (87 FR 6374)*

- Same waiver as prior notices: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives.
- Grantees may buyout second homes.



# II.C. Infrastructure (Public Facilities, Public Improvements)

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## *II.C.1. Infrastructure Planning and Design (87 FR 6374)*

- *New:* Like the CDBG-MIT Notice – HUD is defining infrastructure here, since the definition isn't in the regulations, and is subject to the eligible activities and national objectives in the HCDA.
- For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public in the following sectors:
  - Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Permitting Improvement Steering Council.



## II.C. Infrastructure (Public Facilities, Public Improvements), cont.

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### *II.C.2. Elevation of nonresidential structure (87 FR 6375)*

- Nonresidential structures, including infrastructure, assisted with CDBG–DR funds must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or one percent annual chance) floodplain.
- All Critical Actions within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)– (3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.





## II.C. Infrastructure (Public Facilities, Public Improvements), cont.

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### *II.C.3. CDBG-DR funds as match (87 FR 6375)*

- Same as prior notices: Grant funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity.

### *II.C.4. Requirements for flood control structures (87 FR 6375)*

- *New:* Restriction on dams and levees to enlarge past the original footprint, however it has changed from “prohibited” to “prohibited without pre-approval”



## II.D. Economic Revitalization

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### *II.D.1. Prioritizing economic revitalization assistance—alternative requirement (87 FR 6375)*

- *New:* Priority used to be focused on small businesses, now grantees must prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster.
  - HUD define underserved communities
  - Grantees must maintain supporting documentation to demonstrate how they prioritized underserved communities for purposes of these activities



## II.D. Economic Revitalization, cont.

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### *II.D.2. National objective documentation for activities that support economic revitalization (87 FR 6375)*

- Same alternative requirements as prior notices: Grantees may identify the LMI jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job.

### *II.D.3. Public benefit for activities that support economic revitalization (87 FR 6375)*

- HUD waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), and 24 CFR 1003.302(c) for all economic development activities.



## II.D. Economic Revitalization, cont.

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### *II.D.4. Clarifying note on Section 3 worker eligibility and documentation requirements (87 FR 6376)*

- *New:* There's a new link to the CPD Notice; updated regulatory citations
- <https://www.hudexchange.info/news/stay-up-to-date-on-the-section-3-program/>

### *II.D.5. Waiver and modification of the job relocation clause to permit assistance to help a business return (87 FR 6376)*

- Same alternative requirements as prior notices: If a disaster impacted business was in your community and left, this waiver allows grantees to work with them to return to the community



## II.D. Economic Revitalization, cont.

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### *II.D.6. Underwriting (87 FR 6376)*

- Grantees must comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if grant funds are being used for assistance to a for-profit entity for an economic development project.
- While these requirements haven't changed from prior notices, grantees should think about their existing underwriting practices:
  - Will the new focus on underserved communities change their underwriting practices?
  - Will there be new challenges to consider when prioritizing communities that were economically distressed before the disaster?

### *II.D.7. Limitation on use of funds for eminent domain (87 FR 6376)*

- Same requirement as prior notices: CDBG-DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use.





# Section III: Grant Administration (Paragraphs A – C)

Presenter: Bryce Knolhoff



2022 CDBG-DR Consolidated Notice Training Series



# III.A. Pre-award Evaluation of Management and Oversight of Funds

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*III.A.1. Certification of financial controls and procurement processes, and adequate procedures for proper grant management.*

**a. Documentation requirements (87 FR 6376)** – Each grantee must submit to HUD the certification documentation listed below by April 9, 2022, or with the grantee’s submission of its action plan in DRGR, whichever date is earlier.

- 1) Proficient financial management controls
- 2) Procurement processes based on principles of full and open competition
- 3) Policies and procedures to prevent DOB
- 4) Policies and procedures to determine timely expenditures
- 5) Policies and procedures to maintain a comprehensive accessible website
- 6) Procedures to detect and prevent fraud, waste, and abuse

\*grantees should use the “Financial Management and Grant Compliance Certification Requirements for State Grantees 2020 Disasters” checklist available on HUD’s website.



# III.A. Pre-award Evaluation of Management and Oversight of Funds, cont.

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## *III.A.1.b. Relying on prior submissions—financial management and grant compliance certification requirements (87 FR 6377)*

- Only applies once a grantee has received a CDBG-DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable.
- If a grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee's prior submissions unless –
  - it has been more than 3 years since the executed grant agreement for the original CDBG-DR grant; or
  - a subsequent grant is equal to or greater than 10 times the amount of the original CDBG-DR grant.
- If either of the above two situations apply, grantees must update and resubmit the required documentation with the completed Certification Checklist.



# III.A. Pre-award Evaluation of Management and Oversight of Funds, cont.

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## *III.A.2. Implementation plan (87 FR 6377)*

- a. The grantee will submit an implementation plan that addresses (1) through (3) below to HUD by June 8, 2022, or with the grantee's submission of its action plan, whichever is earlier.
  - 1) Capacity assessment
  - 2) Staffing
  - 3) Internal and interagency coordination



# III.A. Pre-award Evaluation of Management and Oversight of Funds, cont.

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## *III.A.2. Implementation plan.*

### **b. Relying on prior submissions – Implementation plan (87 FR 6378)**

- Only applies once a grantee has received a CDBG-DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable.
- If a grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee's implementation plan submitted for its original CDBG-DR grant unless –
  - it has been more than 3 years since the executed grant agreement for the original CDBG-DR grant; or
  - a subsequent grant is equal to or greater than 10 times the amount of the original CDBG-DR grant.
- If either of the above two situations apply, the grantee is to update its implementation plan to reflect any changes to its capacity, staffing, and coordination.





# III.B. Administration, Planning, and Financial Management

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## *III.B.1. Grant administration and planning.*

- Similar to prior notices
  - a. Grantee responsibilities (87 FR 6378)**
    - Grantees shall administer their awards in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds.
  - b. Grant administration cap (87 FR 6378)**
    - Up to 5% of the grant (plus 5% of program income generated by the grant).



# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.1. Grant administration and planning.*

### **c. Use of funds for administrative costs across multiple grants (87 FR 6378)**

- Permits the use of eligible administrative funds for the cost of administering any of the grants awarded under the below Public Laws and future Acts without regard to the particular disaster appropriation from which such funds originated.
  - Public Laws 114–113, 114–223, 114–254, 115–31, 115–56, 115–123, 115–254, 116–20
  - Similar provision in Public Law 117-43 – that alternative requirement is covered in the AAN since it's specific to these funds.

### **d. Planning expenditures cap (87 FR 6378)**

- Maximum of 15% of the total grant amount.



# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.2. State grantees only.*

### **a. Combined technical assistance and administrative cap (87 FR 6378)**

- Must not exceed 5% of the grant, plus 5% of program income generated by the grant.

### **b. Planning-only activities (87 FR 6378)**

- Applies CDBG Entitlement Program regulations to state grantees so that states' disaster recovery planning activities are presumed to meet a national objective.

### **c. Direct grant administration and means of carrying out eligible activities (87 FR 6379)**

- Allows a state to use its CDBG-DR grant allocation directly to carry out state-administered activities eligible under the Consolidated Notice.



# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.2. State grantees only.*

### **d. Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (87 FR 6379)**

- Permits state grantees to distribute CDBG-DR funds to units of local government and Indian tribes.

### **e. Use of subrecipients (87 FR 6379)**

- When states carry out activities directly through subrecipients –
  - The state is subject to the definition of subrecipients at 24 CFR 570.500(c).
  - The state must adhere to the requirements for agreements with subrecipients at 24 CFR 570.503.
- Requires subrecipients to comply with applicable uniform requirements, except that the subrecipient shall follow procurement requirements imposed by the state.



# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.2. State grantees only.*

### **f. Recordkeeping (87 FR 6379)**

- When a state carries out activities directly, the following alternative provision shall apply:
  - A state grantee shall establish and maintain such records as may be necessary to facilitate:
    - review and audit by HUD of the state's administration of CDBG-DR funds under 24 CFR 570.493; and
    - reviews and audits by the state.
  - The content of records maintained by the state shall be sufficient to:
    - a) enable HUD to make the applicable determinations described at 24 CFR 570.493;
    - b) make compliance determinations for activities carried out directly by the state; and
    - c) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system.
  - For fair housing and equal opportunity purposes, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants, participants, or beneficiaries.



# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.2. State grantees only.*

### **g. Change of use of real property (87 FR 6379)**

- Conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly.

### **h. Responsibility for review and handling of noncompliance (87 FR 6379)**

- The state shall make reviews and audits, including on-site reviews of any local governments or Indian tribes, designated public agencies, and other subrecipients.
- The state shall take such actions as may be appropriate to prevent a continuance of a deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.





# III.B. Administration, Planning, and Financial Management, cont.

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## *III.B.2. State grantees only.*

### **i. Consultation (87 FR 6379)**

- Requires consultation with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any local public housing authorities in determining the use of funds.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement

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## *III.C.1. Action plan (87 FR 6379)*

- Grantees must submit to HUD an action plan which will describe programs and activities that conform to applicable requirements as specified in the Consolidated Notice and the applicable AAN.
  - The action plan must identify the proposed use of all funds, including how the uses incorporate mitigation measures.
  - Grantees must use HUD's Public Action Plan in DRGR to develop all action plans and amendments.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **a. An impact and unmet needs assessment (87 FR 6380)**

- Grantees must develop an assessment to understand the type and location of community needs and to target limited resources to those areas with the greatest need.
- Grantees must also include the costs of incorporating hazard mitigation measures to protect against the specific identified impacts of future extreme weather events and other natural hazards.
  - The analysis should factor in historical and projected data on risk that incorporates best available science.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **b. Connection of programs and projects to unmet needs (87 FR 6380)**

- The plan must provide a clear connection between a grantee's impact and unmet needs assessment and its proposed programs and projects.
- *NEW:* The grantee must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (i.e., housing, economic revitalization, and infrastructure) of greatest needs identified in the assessment or provide an acceptable justification for a disproportional allocation.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **c. Public housing, affordable rental housing, and housing for vulnerable populations (87 FR 6380)**

- Each grantee must include a description of how it has analyzed, identified, and will address the unmet needs associated with the rehabilitation, reconstruction, and new construction of the following types of housing:
  - Public housing;
  - Affordable rental housing (both subsidized and market rate); and
  - Housing for vulnerable populations.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **d. Fair housing, civil rights data, and advancing equity (87 FR 6380)**

- *NEW:* The grantee must comply with its fair housing/nondiscrimination obligations and provide an assessment of:
  - whether its planned use of CDBG-DR funds will have an unjustified discriminatory effect on or fail to benefit racial and ethnic minorities in proportion to their communities' needs; and
  - how it will address the recovery needs of impacted individuals with disabilities.
- Grantees should consider the impact of their planned use of CDBG-DR funds on protected class groups, vulnerable populations, and other historically underserved communities.
- Grantees should identify the above populations (i.e., which protected classes, vulnerable populations, and historically underserved groups were considered) and how those groups can be expected to benefit from the activities set forth in the plan.





# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **d. Fair housing, civil rights data, and advancing equity (87 FR 6380)**

- Grantees must include data for the MID areas that identifies the following information, as it is available:
  - Racial and ethnic make-up of the population
  - Number and percentage of the following groups:
    - LEP populations (for each identified group);
    - persons with disabilities;
    - persons belonging to Federally protected classes under the Fair Housing Act and other vulnerable populations as determined by the grantee;
    - Indigenous populations and tribal communities (for each identified group)
  - Racially and ethnically concentrated areas and concentrated areas of poverty
  - Historically distressed and underserved communities
- Grantees must explain how the use of funds will reduce barriers that individuals may face when enrolling in and accessing CDBG-DR assistance.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **d. Fair housing, civil rights data, and advancing equity (87 FR 6380)**

- Grantees must also identify the proximity of natural and environmental hazards to affected populations in the MID area, including members of protected classes, vulnerable populations, and underserved communities, and explore how CDBG-DR activities may:
  - mitigate environmental concerns; and
  - increase resilience among these populations to protect against the effects of extreme weather events and other natural hazards.
- Grantees must describe how their use of CDBG-DR funds is consistent with their obligation to affirmatively further fair housing.

*\*Best Practice:* Grantees are strongly encouraged to include examples of how their proposed allocations, selection criteria, and other actions can be expected to advance equity for protected class groups and for individuals with disabilities.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **e. Infrastructure (87 FR 6381)**

- Each grantee must include a description of how it plans to:
  - promote sound, sustainable long-term recovery planning;
  - adhere to the Consolidated Notice's elevation requirements; and
  - coordinate with local and regional planning efforts.
- All infrastructure investments must be designed and constructed to withstand chronic stresses and extreme events by identifying and implementing resilience performance metrics.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **e. Infrastructure (87 FR 6381)**

- If a grantee is allocating funds for infrastructure, its description must:
  - 1) Address the construction or rehabilitation of disaster-related systems or community-based mitigation systems
  - 2) Reduce natural hazard risks through measures and strategies
  - 3) Achieve regional or local objectives to reduce future risk to the jurisdiction
  - 4) Evaluate costs and benefits when selecting projects
  - 5) Align with other planned federal, state, or local improvements and foster the potential for additional infrastructure funding
  - 6) Employ adaptable and reliable technologies to prevent premature obsolescence of infrastructure
  - 7) Invest in infrastructure and related recovery needs within historically underserved communities



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **f. Minimize Displacement (87 FR 6381)**

- Must include a description of how the grantee plans to minimize displacement.
- Grantees must indicate to HUD whether they will be amending an existing Residential Anti-displacement and Relocation Assistance Plan (RARAP) or creating a new RARAP specific to CDBG-DR.

### **g. Allocation and award caps (87 FR 6381)**

- The grantee must provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs and consistent with the requirements to integrate hazard mitigation measures into all its programs.
- The grantee shall also describe the maximum amount of assistance (i.e., award cap) available to a beneficiary under each of the grantee's disaster recovery programs with a transparent exception policy.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **h. Cost controls and warranties (87 FR 6382)**

- Requires standards for construction contractors and mechanisms to help beneficiaries respond to contractor fraud, poor quality work, and associated issues.
- Grantees must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis and describe its controls for assuring that construction costs are reasonable/consistent with market costs at the time and place of construction.





# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.1. Action plan.*

### **i. Resilience planning (87 FR 6382)**

- The grantee's action plan must describe how the grantee will:
  - emphasize high quality design, durability, energy efficiency, sustainability, and mold resistance;
  - support adoption and enforcement of modern and/or resilient building codes by using a tool like FEMA's Nationwide Building Code Adoption Tracking (BCAT) portal;
  - fund feasible, cost-effective measures;
  - make land-use decisions that reflect responsible and safe standards; and
  - increase awareness of the hazards in their communities through outreach to the MID areas.
- Include a description of how the grantee will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, including climate-related natural hazards and the creation of resilience performance metrics.
  - Grantees must use their FEMA-approved Hazard Mitigation Plan (HMP), Community Wildfire Protection Plan (CWPP), or other resilience plans to inform the evaluation.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.2. Additional action plan requirements for states (87 FR 6382)*

- For state grantees, the action plan must describe how the grantee will distribute grant funds, either through:
  - specific programs and projects the grantee will carry out directly; or
  - a method of distribution of funds to local governments and Indian tribes.
- **NEW Provision:** For states using a method of distribution, if some required information is unknown when the grantee is submitting its action plan to HUD, the grantee must update the action plan through a substantial amendment once the information is known.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.2. Additional action plan requirements for states (87 FR 6382)*

- All states must include in their action plans the information outlined below:

- 1) How the impact and unmet needs assessment informs funding determinations.
- 2) When funds are subgranted to local governments or Indian tribes, all criteria used to allocate and award the funds, including the relative importance of each criterion.
- 3) ***How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect based on race or other protected classes and ensures the participation of minority residents and those belonging to other protected class groups in the MID areas.***
- 4) The threshold factors and recipient or beneficiary grant size limits that are to be applied.
- 5) The projected uses for the CDBG-DR funds, by responsible entity, activity, and geographic area.
- 6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed.
- 7) When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion, and any eligibility requirement.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.3. Additional action plan requirements for local governments (87 FR 6382)*

- For local government grantees, the action plan shall describe specific programs and/or activities they will carry out and must also describe:
  - 1) How the impact and unmet needs assessment informs funding determinations.
  - 2) All criteria used to select applications, including the relative importance of each criterion, and any eligibility requirements.
  - 3) ***How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect and ensures the participation of minority residents and those belonging to other protected class groups in the MID areas.***
  - 4) The threshold factors and grant size limits that are to be applied.
  - 5) The projected uses for the CDBG-DR funds, by responsible entity, activity, and geographic area.
  - 6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed.



## III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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### *III.C.4. Waiver of 45-day review period for CDBG-DR action plans to 60 days (87 FR 6383)*

- HUD's action plan review period is 60 days.
- Establishes an alternative process that offers grantees the option to voluntarily provide a revised action plan, updated to respond to HUD's comments, no later than day forty-five in HUD's 60-day review.

### *III.C.5. Obligation and expenditure of funds (87 FR 6383)*

- The grantee must meet applicable environmental requirements before the use or commitment of funds for each activity.
- The disbursement of grant funds must begin no later than 180 calendar days after HUD executes a grant agreement with the grantee.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.6. Amending the action plan (87 FR 6383)*

- The grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram funds, as necessary, in the DRGR system.
- At a minimum, the grantee must:
  - 1) identify exactly what content is being added, deleted, or changed;
  - 2) clearly illustrate where funds are coming from and where they are moving to; and
  - 3) include a revised budget allocation table that reflects the entirety of all funds, as amended.





# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.6. Amending the action plan.*

### **a. Substantial amendment (87 FR 6383)**

- In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan.
- At a minimum, the following modifications will constitute a substantial amendment:
  - a change in program benefit or eligibility criteria;
  - the addition or deletion of an activity;
  - (NEW) a proposed reduction in the overall benefit requirement; or
  - the allocation or reallocation of a monetary threshold specified by the grantee in its action plan.
- For all substantial amendments, the grantee must follow the same procedures required for the preparation and submission of an action plan, with the exception of the public hearing and consultation requirements.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.6. Amending the action plan.*

### **b. Nonsubstantial amendment (87 FR 6383)**

- The grantee must notify HUD, but is not required to seek public comment, when it makes any amendment that is not substantial.
- Substantial and Nonsubstantial amendments are completed using the DRGR system. Grantees should make sure their HUD CPD reps and Grant Managers are aware of the submittal of a substantial or nonsubstantial amendment.



# III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement, cont.

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## *III.C.7. Projection of expenditures and outcomes (87 FR 6383)*

- Each grantee must submit projected expenditures and outcomes with the action plan.
- The grantee will use DRGR's upload feature to include projections and accomplishments for each program created.



# Section III: Grant Administration (Paragraphs D - G)

Presenter: Wareesha Tariq



2022 CDBG-DR Consolidated Notice Training Series



# Highlights of Paragraphs D-G

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- We will be discussing the following four topics:
  1. Citizen Participation (87 FR 6383)
  2. Program Income (87 FR 6385)
  3. Other General Waivers and Alternative Requirements (87 FR 6385)
  4. Ineligible Activities in CDBG-DR (87 FR 6387)



# Outline: Section III Paragraph D

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## **III.D. Citizen Participation Requirements (87 FR 6383)**

- III.D.1. Citizen participation waiver and alternative requirement.
  - III.D.1.a. Requirement for consultation during plan preparation.
  - III.D.1.b. Publication of the action plan and opportunity for public comment.
  - III.D.1.c. Consideration of public comments.
  - III.D.1.d. Availability and accessibility of documents.
  - III.D.1.e. Public website.
  - III.D.1.f. Application status.
  - III.D.1.g. Citizen complaints.
  - III.D.1.h. General requirements.





## III.D. Citizen Participation Requirements

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### *III.D.1. Citizen participation waiver and alternative requirement (87 FR 6383)*

- The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements) and the streamlined citizen participation alternative requirements are listed on the next slide:

## III.D. Citizen Participation Requirements, cont.

### *III.D.1.a. Requirement for consultation during plan preparation (87 FR 6383)*

- All grantees must consult with states, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area, including organizations that advocate on behalf of members of protected classes, vulnerable populations, and underserved communities impacted by the disaster, to ensure consistency of the action plan with applicable regional redevelopment plans.
- A grantee must consult with other relevant government agencies, including state and local emergency management agencies that have primary responsibility for the administration of FEMA funds, if applicable.



## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.b. Publication of the action plan and opportunity for public comment (87 FR 6384)*

- Following the creation of the action plan, the grantee must publish the proposed plan or substantial amendment for public comment, and it must be prominently displayed on the grantee's official DR website. The grantee must also provide reasonable opportunity for everyone to review the action plan as well.



## III.D. Citizen Participation Requirements, cont.

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- *NEW:* Grantees shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from providing public comment on the grantee's action plan or substantial amendment.
- If the grantee identifies barriers that may limit or prohibit equitable participation, the grantee must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.



## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.b. Publication of the action plan and opportunity for public comment (87 FR 6384) Public Hearing Requirements:*

- The grantee must convene at least one public hearing on the proposed action plan after it has published on its website to solicit public comment and before submittal of the final Public Action Plan to HUD.
- Grantees with allocations under \$500 million are required to hold at least one public hearing; and grantees with allocations over \$500 million or more must convene at least two public hearings in HUD identified MID areas.
  - If the grantee holds more than one public hearing, then it must hold each hearing in a different location within the MID area.





## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.b. Publication of the action plan and opportunity for public comment (87 FR 6384) Public Hearing Requirements:*

- Grantees can also convene public hearings virtually but if they do, they must allow questions in real time, with answers coming directly from the grantee representatives to all “attendees.”
- For both virtual and in person hearings, grantees must update their citizen participation plans and provide that hearings be held at times and locations convenient to beneficiaries, with accommodations provided for persons with disabilities, non-English speaking residents, and other vulnerable populations.





## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.b. Publication of the action plan and opportunity for public comment (87 FR 6384) Public Hearing Requirements:*

- All in-person hearings must be held in facilities that are physically accessible to persons with disabilities. Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual hearings.
- In their citizen participation plan, they must identify how the needs of non-English speaking residents will be met in the case of virtual and in-person public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

\*More specific accessibility requirements are also listed in this section



## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.c. Consideration of public comments (87 FR 6384)*

- Same requirements from prior notices: The grantee must provide a reasonable time frame (no less than 30 days) and method(s) including electronic submission for receiving comments on the action plan.
- Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan.
- A summary of comments on the plan or amendment, and the grantee's response to each, must be included (e.g., uploaded) in DRGR with the action plan or substantial amendment.
- Most importantly, grantee responses must address the substance of the comment rather than merely acknowledge that the comment was received.



## III.D. Citizen Participation Requirements, cont.

### *III.D.1.d. Availability and accessibility of documents (87 FR 6384)*

- The grantee must make the action plan, any substantial amendments, vital documents, and all performance reports available to the public on its website.
- “Vital Documents” is a new term in our notices and there is a link to offer additional guidance:  
([https://www.lep.gov/sites/lep/files/resources/HUD\\_guidance\\_Jan07.pdf](https://www.lep.gov/sites/lep/files/resources/HUD_guidance_Jan07.pdf))



## III.D. Citizen Participation Requirements, cont.

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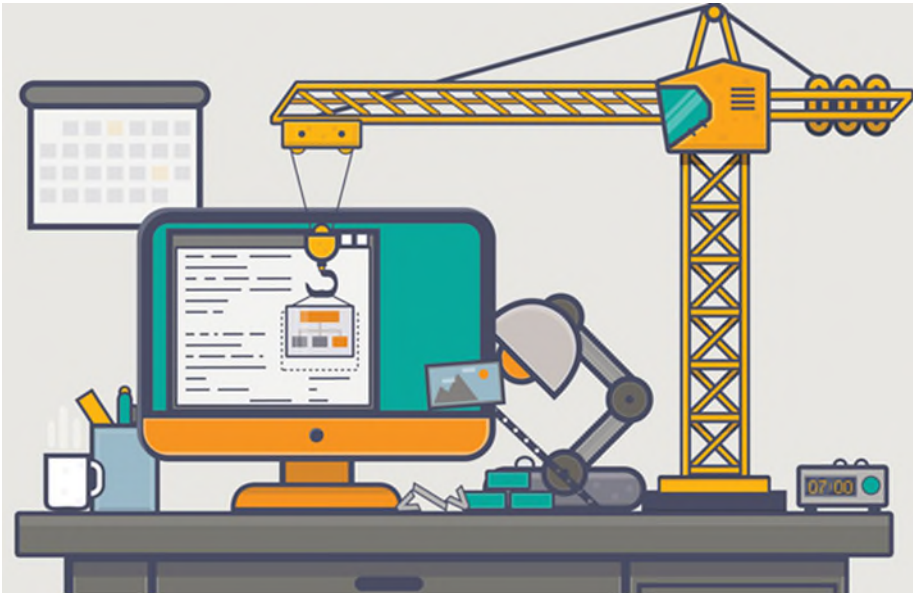
- These documents must also be available in accessible forms and the grantee must provide meaningful access to a list of vulnerable and affected populations.
- They must also describe the procedures for assessing their language and translation needs and more information on requirements related to non-English-speaking residents is available in this section.



## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.e. Public website (87 FR 6384)*



- The grantee must maintain a public website that shows how all grant funds are used and administered.
- The website must also include the following items: the action plan created using DRGR (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; all contracts that will be paid with CDBG-DR funds; and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient.



## III.D. Citizen Participation Requirements, cont.

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- *NEW:* The grantee puts the action plan into DRGR and then downloads the PDF to post it on their website. Grantees must adopt this new process into their procedures.
- *NEW:* Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee's website.





## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.f. Application status (87 FR 6384)*

- The grantee must provide multiple methods of communication to provide applicants with timely information about the status of their applications.

### *III.D.1.g. Citizen complaints (87 FR 6384)*

- The grantee must provide a timely written response to every citizen complaint within fifteen working days of the receipt of the complaint (or they must document why additional time for the response was required).





## III.D. Citizen Participation Requirements, cont.

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### *III.D.1.h. General requirements (87 FR 6384)*

- For plan publication, the comprehensive disaster recovery website and vital documents must ensure effective communication for individuals with disabilities, as required by 24 CFR 8.6 and the Americans with Disabilities Act, as applicable.
- This includes the requirement to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.
- When required by the notice, grantees must take reasonable steps to ensure meaningful access for individuals with LEP.



# Outline: Section III Paragraph E

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## III.E. Program Income (87 FR 6385)

- III.E.1. Program income waiver and alternative requirement.
  - III.E.1.a. Definition of program income.
  - III.E.1.b. Program income—does not include:
  - III.E.1.c. Retention of program income.
  - III.E.1.d. Program income—use, close out, and transfer.
  - III.E.1.e. Revolving funds.



## III.E. Program Income

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### *III.E.1. Program income waiver and alternative requirement (87 FR 6385)*

- HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e), 24 CFR 570.500, and 24 CFR 570.504 and providing the alternative requirement described below.
- Program income earned by Indian tribes that are subrecipients of state grantees or local government grantees will be subject to the program income requirements for subrecipients of those grantees.



## III.E. Program Income, cont.

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### *III.E.1.a. Definition of program income (87 FR 6385)*

- “Program income” is defined as gross income generated from the use of CDBG-DR funds and received by a state, local government, or Indian tribe receiving funds from a grantee, or their subrecipients.



## III.E. Program Income, cont.

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### *III.E.1.b. Program income—does not include: (87 FR 6385)*

- Program Income does not include a total amount of funds that is less than \$35,000 received in a single year and retained by a state, local government, or a subrecipient.

### *III.E.1.c. Retention of program income (87 FR 6385)*

- State grantees can permit a local government to retain their program income, but they are not required to do so.



## III.E. Program Income, cont.

### *III.E.1.d. Program income—use, close out, and transfer (87 FR 6385)*

- Program income received before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities is treated as additional CDBG-DR funds and is subject to the requirements of the Consolidated Notice. This means it must be used in accordance with the grantee's action plan for disaster recovery.



## III.E. Program Income, cont.

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- A state or local government grantee can transfer program income before closeout or after closeout of the grant to their annual CDBG program or to any annual CDBG-funded activities carried out by a local government within the state.
- If grantees utilize that option, then those funds will be subject to the state or local government's regular CDBG program rules and will no longer be subject to the waivers and alternative requirements of the Consolidated Notice.





## III.E. Program Income, cont.

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### *III.E.1.e. Revolving funds (87 FR 6385)*

- A revolving fund is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. Grantees can establish revolving funds to carry out specific, identified activities or to distribute funds to local governments or tribes to carry out specific, identified activities.
- These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund.

# Outline: Section III Paragraph F

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## **III.F. Other General Waivers and Alternative Requirements (87 FR 6385)**

- III.F.1. Consolidated Plan waiver.
- III.F.2. Overall benefit requirement.
- III.F.3. Use of the urgent need national objective.
- III.F.4. Reimbursement of disaster recovery expenses by a grantee or subrecipient.
- III.F.5. Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.
- III.F.6. Alternative requirement for the elevation of structures when using CDBG-DR funds as the non-Federal match in a FEMA-funded project.
- III.F.7. Certifications waiver and alternative requirement.



# III.F. Other General Waivers and Alternative Requirements

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## *III.F.1. Consolidated Plan waiver (87 FR 6385)*

- HUD is temporarily waiving the requirement for consistency with the consolidated plan.
- If a grantee is not scheduled to submit a new three-to five-year consolidated plan within the next two years, then it must update its existing three-to five-year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the AAN
- Date to Remember: February 8, 2024



## III.F. Other General Waivers and Alternative Requirements, cont.

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### *III.F.2. Overall benefit requirement (87 FR 6385)*

- This notice requires grantees to comply with the overall benefit requirements, which require that 70 percent of funds be used to benefit LMI persons.
- A grantee can seek to reduce the overall benefit requirement below 70 percent, but it must submit a substantial amendment (NEW) and provide a justification that meets several requirements that are listed in this section.



## III.F. Other General Waivers and Alternative Requirements, cont.

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### *III.F.3. Use of the urgent need national objective (87 FR 6386)*

- The Secretary is waiving the urgent need national objective criteria and establishing an alternative requirement for any CDBG-DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee's Allocation Announcement Notice (NEW).
- Date to Remember: February 7, 2025



## III.F. Other General Waivers and Alternative Requirements, cont.

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### *III.F.4. Reimbursement of disaster recovery expenses by a grantee or subrecipient (87 FR 6386)*

- *Previously, this information was provided via a CPD Notice but HUD has now included this information in the Consolidated Notice:*
- This section creates an alternative requirement that grantees must include any pre-agreement activities in their action plans, including any costs of eligible activities that were funded with short-term loans (e.g., bridge loans) and that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

# III.F. Other General Waivers and Alternative Requirements, cont.

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## *III.F.5. Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities. (87 FR 6386)*

- ***What are pre-application costs?***
  - These are costs incurred by an applicant to a CDBG-DR funded program before the time of application to a grantee or subrecipient, which may be before (pre-award) or after the grantee signs its CDBG-DR grant agreement.
- ***Grantees can only charge costs to the grant that meet the following requirements:***
  - Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance;





## III.F. Other General Waivers and Alternative Requirements, cont.

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- Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities is eligible only if:
  - (1) The person or private entity incurred the expenses within one year after the applicability date of the grantee's Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later); and
  - (2) the person or entity pays for the cost before the date on which the person or entity applies for CDBG-DR assistance.
- Date to Remember: February 8, 2023



## III.F. Other General Waivers and Alternative Requirements, cont.

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- For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
- Costs must be adequately documented, as required by 2 CFR 200.403(g); and
- Grantees must complete a duplication of benefits check before providing assistance.



## III.F. Other General Waivers and Alternative Requirements, cont.

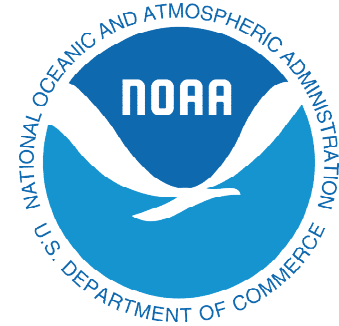
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- Grantees must incorporate into their policies and procedures the basis for determining that the assistance provided under the terms of this provision is necessary and reasonable.
- Grantees may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. If a grantee cannot meet all requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG-DR or other HUD funds.
- The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements.



## III.F. Other General Waivers and Alternative Requirements, cont.

- This section also includes the requirement to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation and section 7 of the Endangered Species Act of 1973, when designing a reimbursement program.
- All grantees must follow all cross-cutting requirements, as applicable, for all CDBG-DR funded activities including but not limited to the environmental requirements above, the Davis Bacon Act, Civil Rights Requirements, HUD's Lead Safe Housing Rule, and the URA.



## III.F. Other General Waivers and Alternative Requirements, cont.

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### *III.F.6. Alternative requirement for the elevation of structures when using CDBG-DR funds as the non-Federal match in a FEMA-funded project (87 FR 6386)*

- Currently, CDBG-DR grantees using FEMA and CDBG-DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG-DR elevation requirements and those established by FEMA so the Secretary finds good cause to establish an alternative requirement here.



## III.F. Other General Waivers and Alternative Requirements, cont.

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### **The alternative requirements apply when:**

- a) CDBG-DR funds are used as the non- Federal match for FEMA assistance;
- b) the FEMA-assisted activity, for which CDBG-DR funds will be used as match, commenced before HUD's obligation of CDBG-DR funds to the grantee; and
- c) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.



## III.F. Other General Waivers and Alternative Requirements, cont.

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- While FEMA may change its standards for elevation in the future, **AS LONG AS** the CDBG-DR grantee is following a FEMA-approved flood standard this waiver and alternative requirement will continue to apply.





## III.F. Other General Waivers and Alternative Requirements, cont.

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### *III.F.7. Certifications waiver and alternative requirement (87 FR 6387)*

- Grantee certification statements have been updated in this section and must be included with the action plan (a – q).
- *NEW:* Grantees need to upload the certifications statements into DRGR and submit with the final Public Action Plan.



# Outline: Section III Paragraph G

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## **III.G. Ineligible Activities in CDBG-DR (87 FR 6387)**

- III.G.1. Prohibition on compensation.
- III.G.2. Prohibition on forced mortgage payoff.
- III.G.3. Prohibiting assistance to private utilities.



# III.G. Ineligible Activities in CDBG-DR

## ***III.G. Ineligible Activities in CDBG-DR (87 FR 6387)***

- Any activity that is not authorized under Section 105(a) of the HCDA is ineligible to be assisted with CDBG-DR funds, unless explicitly allowed by waiver and alternative requirement in the Consolidated Notice. Additionally, the uses described below are explicitly prohibited.
  - III.G.1. Prohibition on compensation.
  - III.G.2. Prohibition on forced mortgage payoff.
  - III.G.3. Prohibiting assistance to private utilities.



# Section IV: Other Program Requirements

Presenter: Bonnie Newcomb



# IV: Other Program Requirements

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## *IV.A. Duplication of Benefits (87 FR 6388)*

- The grantee must comply with section 312 of the Stafford Act, as amended, which prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which it has received financial assistance under any other program or from insurance or any other source.
- A person or entity may receive financial assistance only to the extent that the person or entity has a disaster recovery need that has not been fully met.
- Grantees must establish policies and procedures to provide for the repayment of a CDBG-DR award when assistance is subsequently provided for that same purpose from any other source.



# IV: Other Program Requirements, cont.

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## *IV.A. Duplication of Benefits (87 FR 6388)*

- Certain sections of the 2019 DOB Notice are included in this section for convenience.
- Grantees that received funds for 2020 disasters must follow ALL of the [2019 DOB Notice](#) (including the section duplicated in the Consolidated Notice)

Training that includes a walk through of the 2019 DOB Notice can be found here:

- [2019 Duplication of Benefits webinar](#)



# IV: Other Program Requirements, cont.

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## *IV.B. Procurement (87 FR 6388)*

- For a grantee to have proficient procurement processes, a grantee must:
  1. Indicate the procurement standards that apply to its use of CDBG–DR funds;
  2. Indicate the procurement standards for subrecipients or local governments as applicable;
  3. Comply with the standards it certified to HUD that it follows (and update the certification submissions when substantial changes are made);
  4. Post the required documentation to the official website as described below; and
  5. Include periods of performance and date of completion in all CDBG-DR contracts.





# IV: Other Program Requirements, cont.

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## *IV.B. Procurement (87 FR 6388)*

- State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and the following alternative requirements:
  - The grantee must evaluate the cost or price of the product or service being procured.
  - State grantees shall establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG-DR funds.



# IV: Other Program Requirements, cont.

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## *IV.B. Procurement (87 FR 6388)*

- NEW provision for State grantees:
  - If the state agency designated as the administering agency chooses to provide funding to another state agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG-DR activity must follow the procurement processes that the administering agency is subject to, or whether the agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.



# Section IV: Other Program Requirements, cont.

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## *IV.B. Procurement (87 FR 6388)*

- HUD is establishing an additional alternative requirement for all contracts with contractors used to provide goods and services, as follows:
  1. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;
  2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and
  3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.



# IV: Other Program Requirements, cont.

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## *IV.C. Use of the “Upper Quartile” or “Exception Criteria”*

- *Same requirements as prior notices and CDBG.*
- The LMA benefit requirement is modified when fewer than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons (87 FR 6388)
- Grantees can visit this website to see what jurisdictions are eligible:
  - <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/>



# IV: Other Program Requirements, cont.

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## *IV.D. Environmental Requirements (87 FR 6389)*

- IV.D.1. Clarifying note on the process for environmental release of funds when a state carries out activities directly
  - Per 24 CFR 58.4(b)(1), when a state carries out activities directly (including through subrecipients that are *not* units of general local government), the state must submit the Certification and Request for Release of Funds to HUD for approval.
- IV.D.2. Adoption of another agency's environmental review
  - This provision allows the recipient of supplemental assistance (the CDBG-DR funds) to adopt another Federal agency's review where the HUD assistance supplements the Stafford Act, and the other Federal agency performed an environmental review for assistance under section 402, 403, 404, 406, 407, or 502 of the Stafford Act.
  - Grantees should review this section for the other provisions that apply.



# IV: Other Program Requirements, cont.

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## *IV.D. Environmental Requirements (87 FR 6389)*

- IV.D.3. Historic Preservation reviews
  - The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108).
- IV.D.4. Tiered environmental reviews
  - Tiering is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review” (40 CFR 1501.11(a)).
  - Grantees should review this section for all the requirements that apply to tiering.



# IV: Other Program Requirements, cont.

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## *IV.E. Flood Insurance Requirements (87 FR 6389)*

- IV.E.1. Flood insurance purchase requirements
  - When grantees use CDBG-DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain), the grantee must comply with applicable Federal, state, local, and tribal laws and regulations related to both flood insurance and floodplain management.
  - The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area.





# IV: Other Program Requirements, cont.

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## *IV.E. Flood Insurance Requirements (87 FR 6389)*

- **IV.E.2.a. Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.**
  - Section 582 of the National Flood Insurance Reform Act of 1994 - Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance, if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property.



# IV: Other Program Requirements, cont.

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## *IV.E. Flood Insurance Requirements (87 FR 6389)*

- **IV.E.2.b. Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.**
  - Prohibits flood disaster assistance for households above 120 percent of AMI if they failed to obtain flood insurance (even when they were NOT required to)
- **IV.E.2.c. Responsibility to inform property owners to obtain and maintain flood insurance**
  - A grantee or subrecipient receiving CDBG–DR funds must notify property owners of their responsibilities under section 582.



# IV: Other Program Requirements, cont.

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## *IV.F. URA, Section 104(d), and Related CDBG Program Requirements (87 FR 6390)*

- *IV.F.1. Section 104(d) one-for-one replacement of lower-income dwelling units.*
  - *NEW:* Waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation.
  - *NEW:* Grantees are reminded that tenant- occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG-DR assisted activity are generally subject to one-for-one replacement requirements at 24 CFR 42.375 and that these provisions are not waived.



# IV: Other Program Requirements, cont.

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*IV.F. URA, Section 104(d), and Related CDBG Program Requirements (87 FR 6390) – Similar requirements as the prior notices*

- IV.F.2. Section 104(d) relocation assistance.
- IV.F.4. URA voluntary acquisition - homebuyer primary residence purchase.
- IV.F.5. CDBG displacement, relocation, acquisition, and replacement housing program regulations - Optional relocation assistance.
  - All grantees may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies (even states).
- IV.F.6. Waiver of the Section 414 of the Stafford Act



# IV: Other Program Requirements, cont.

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## *IV.F. URA, Section 104(d), and Related CDBG Program Requirements (87 FR 6391)*

- IV.F.3. URA replacement housing payments for tenants.
  - Permits grantees to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant.
  - Grantees can offer rental housing through a rental housing program subsidy, provided that comparable replacement dwellings are made available to the tenant and the period of authorized assistance is at least 42 months.



# IV: Other Program Requirements, cont.

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## *IV.F. URA, Section 104(d), and Related CDBG Program Requirements (87 FR 6391)*

- IV.F.7. Residential anti-displacement and relocation assistance plan (RARAP) Section 104(d)
  - *NEW*: Grantees who are following an existing RARAP for CDBG purposes must either:
    - (1) Amend their existing RARAP; or
    - (2) Create a separate RARAP for CDBG–DR purposes, to reflect applicable waivers and alternative requirements.
- Grantees should state which option they are pursuing in their action plan



# IV: Other Program Requirements, cont.

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- RARAP requirements for CDBG-DR.
  - The CDBG-DR RARAP must describe how the grantee plans to minimize displacement of members of families and individuals from their homes and neighborhoods as a result of any CDBG-DR assisted activities, including disaster recovery activities where displacement can be prevented (e.g., housing rehabilitation programs).
  - Across disaster recovery activities—such as buyouts and other eligible acquisition activities, where minimizing displacement is not reasonable, feasible, or cost-efficient and would not help prevent future or repetitive loss—the grantee must describe how it plans to minimize the adverse impacts of displacement.
  - Grantees should review this section for all the requirements that apply to the RARAP.





# Section V: Performance Reviews

Presenter: Clay LLOYD



2022 CDBG-DR Consolidated Notice Training Series



# V. Performance Review

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## *V.A. Timely distribution and expenditure of funds (87 FR 6391)*

- Six-year deadline once HUD signs the grant agreement (can be extended with good cause)

## *V.B. HUD's Review of Continuing Capacity (87 FR 6391)*

- Review of all the tools HUD has at its disposal for corrective actions and grant conditions

## *V.C. Grantee Reporting Requirements in the DRGR system (87 FR 6392)*

- *New:* New changes will be reviewed in the upcoming Public Action Plan Webinar





# The Allocation Announcement Notice (AAN)

Presenter: Jen Carpenter



# III.A. Requirements Related to Administrative Funds

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## *III.A.1. Action plan submittal for program administrative costs (87 FR 6365)*

- Grantees can choose to submit an Action Plan for Program Administrative Costs (PACs)
- Tools Available Online Now:
  - [Optional Action Plan Template for Program Administrative Costs](#)
  - [HUD Review Checklist for the Action Plan for Program Administrative Costs](#)



# III.A. Requirements Related to Administrative Funds, cont.

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## *III.A.1. Action plan submittal for program administrative costs (87 FR 6365)*

- **III.A.1.a. Publication of the action plan for program administrative costs and opportunity for public comment (87 FR 6366)**
  - 7-day comment period.
  - Must include prominent posting on the grantee's official disaster recovery website and must afford residents, affected local governments, and other interested parties a reasonable opportunity to review the contents of the plan.
- **III.A.1.b. Certifications waiver and alternative requirement (87 FR 6366)**
  - Subset of certification statements must be submitted



## III.A. Requirements Related to Administrative Funds, cont.

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### *III.A.2. Use of administrative funds across multiple grants (87 FR 6367)*

- 2020 CDBG-DR grantees that have received CDBG-DR or CDBG-MIT grants in the past or in any future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) for the cost of administering any CDBG-DR or CDBG-MIT grant without regard to the particular disaster appropriation from which such funds originated.



# IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

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## *IV.A. Grant Administration (87 FR 6367)*

### *IV.A.1. Duplication of Benefits (DOB).*

- Grantees that received funds for 2020 disasters must follow the applicable sections of the [2019 DOB Notice](#) (84 FR 28836) and section IV.A. of the CDBG-DR Consolidated Notice
- Training: <https://www.hudexchange.info/trainings/courses/duplication-of-benefits-webinar-2019/2970/>





# IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements, cont.

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## *IV.A.2. CDBG-DR mitigation set-aside (87 FR 6367)*

- 15 percent of funds received must be spent on mitigation activities in the MID areas (listed in Table 1 in the Notice)
- **IV.A.2.a. Mitigation needs assessment (87 FR 6367)**
- **IV.A.2.b. Connection of programs and projects to the mitigation needs assessment (87 FR 6368)**
  - Must conduct a risk-based assessment to inform the use of the CDBG-DR mitigation set aside funds considering identified current and future risks
  - Must assess the characteristics and impacts of current and future hazards
  - Must assess mitigation needs in a manner that effectively addresses the risks to indispensable services
  - Must cite data sources and use risks identified in the current HMP



## IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements, cont.

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- Grantees must demonstrate that activities funded by the CDBG-DR mitigation set-aside:
  1. Meet the definition of mitigation activities
  2. Address the current and future risks identified in mitigation needs assessment in the MID areas
  3. Are CDBG eligible activities under Title I of the HCDA or otherwise eligible through a waiver or alternative requirement
  4. Meet a national objective



## IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements, cont.

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- Grantees can choose two ways to meet the requirements of the CDBG-DR Mitigation Set-Aside:
  - 1.) Tie-back – include eligible recovery activities that have tie-back to the disaster and incorporate mitigation measures into the recovery activities; OR
  - 2.) No Tie-back – include activities that do not have tie-back to the disaster but are still eligible and incorporate mitigation measures.
- To count any activities towards the CDBG-DR Mitigation Set-Aside grantees must:
  1. Document how those activities and the incorporated mitigation measures will meet the definition of mitigation
  2. Report the activities as a "MIT" activity type in DRGR



# IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements, cont.

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## *IV.A.3. Interchangeability of disaster funds (87 FR 6368)*

- If the MID areas overlap, grantees may choose to use their 2020 CDBG-DR grants or any future or prior allocation of CDBG-DR funds to address unmet needs of both disasters.
- Grantees must follow the rules and requirements outlined in the *Federal Register* notice applicable to the funds (i.e., the rules follow the money)

## *V. Duration of Funding (87 FR 6368)*

- 6-year expenditure timeline.
- Grantees may request an extension with good cause.







# Thank You!

If you have any questions, please feel free to send an email to DRSI's Policy Unit at [DRSIPolicyUnit@hud.gov](mailto:DRSIPolicyUnit@hud.gov)

